



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA-R09-UST-2021-0597; FRL-8977-02-R9]

Approval of State Underground Storage Tank Program Revisions; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), as amended, the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Nevada's Underground Storage Tank (UST) program since the previous authorization on July 17, 1998. This action is based on the EPA's determination that these revisions satisfy all requirements needed for program approval. The State's federally authorized program, as revised pursuant to this action, will remain subject to the EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

DATES: This authorization is effective on [insert date 60 days after date of publication in the *Federal Register*] without further notice, unless the EPA receives adverse comment by [insert date 30 days after date of publication in the *Federal Register*]. If the EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the authorization will not take effect.

ADDRESSES: Submit any comments, identified by EPA-R09-UST-2021-0597, by one of the following methods:

1. *Federal eRulemaking Portal: <https://www.regulations.gov>.* Follow the on-line instructions for submitting comments.
2. *E-mail: platukyte.simona@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA-R09-UST-2021-0597. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or e-mail. The Federal <https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

The EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance with additional submission methods.

You can view and copy the documents that form the basis for this action and associated publicly available materials through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Simona Platukyte, Project Officer, Underground Storage Tank Program, EPA Region 9, phone number (415) 972-3310, e-mail address: *platukyte.simona@epa.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Region 9 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via *<https://www.regulations.gov>*, as no mail, courier, or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Nevada's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States that have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program equivalent to, consistent with, and no less stringent than the Federal underground storage tank program. When the EPA revises the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by the EPA.

B. What decisions has the EPA made in this authorization?

On November 20, 2018, in accordance with 40 CFR 281.51(a), Nevada submitted a program revision application seeking the EPA's approval for its UST program revisions (State Application). On July 29, 2021, Nevada submitted amendments to the revision application, based on comments from the EPA. Nevada's revisions correspond to the EPA's final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20,

the State Application contains the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, copies of all relevant state statutes and regulations, and an application addendum submitted on July 29, 2021. We have reviewed the State Application and determined that the revisions to Nevada's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Nevada program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Nevada final approval to operate its UST program with the changes described in the program revision application and as outlined below in Section I.G of this document.

C. What is the effect of this action on the regulated community?

This action does not impose additional requirements on the regulated community because the regulations being approved by this authorization are already in effect in the State of Nevada, and are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is the EPA using a direct final authorization?

The EPA is publishing this direct final authorization without a prior proposal because we view this as a noncontroversial action and we anticipate no adverse comment. Nevada did not receive any comments during its comment period when the rules and regulations being considered in this document were proposed at the State level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final authorization, the EPA is publishing a separate document in the "Proposed Rules" section of this Federal Register that serves as the proposal to approve the State's UST program revisions, and provides an opportunity for public comment. If the EPA

receives comments that oppose this approval, the EPA will withdraw this direct final authorization by publishing a document in the **Federal Register** before it becomes effective. The EPA will base any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final authorization. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Nevada previously been approved?

On March 30, 1993, the EPA finalized a rule approving the UST program that Nevada proposed to administer in lieu of the Federal UST program. On July 17, 1998, the EPA codified the approved Nevada program that is subject to the EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each state program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR part 281, subpart B (Components of a Program Application), subpart C (Criteria for No Less Stringent), and subpart D (Adequate Enforcement of Compliance). This is also true for proposed revisions to approved state programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the Federal UST program and because the EPA has confirmed that the Nevada UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D, after this approval. There remains a typographical error in NAC 445C.230, in the Cleanup of Discharged Petroleum section, which indicates that Nevada adopts by reference the relevant Federal regulations as they existed on July 1, 1990, rather than as they existed on

October 13, 2015. The correct date is referenced in NAC 459.993, in the Storage Tanks section.

Nevada's July 29, 2021 submittal describes the steps it will take to revise the regulation.

The Nevada Division of Environmental Protection (NDEP or Division) is the lead implementing agency for the UST program in Nevada, except in Indian country.

NDEP continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under selected provisions from Nevada Revised Statutes (NRS), Chapters 233B, Nevada Administrative Procedures Act; Chapter 439 Administration of Public Health; Chapter 445A, Water Controls; and Chapter 459, Hazardous Materials. The Nevada UST Program gets its enforcement authority from the powers of the Nevada State Environmental Commission found at NRS 445A.675, 445A.690, 459.842, 459.844, 459.846, 459.848, 459.850, 459.852, 459.854 and 459.856 and administrative rules under the Nevada Administrative Code (NAC) at NAC 459.9941 through 459.9944 regarding delivery prohibition.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, are found under NRS 459, in addition to the regulatory provisions of NAC 459 and selected sections from NAC 445A, effective November 2, 2018; Reporting and recordkeeping requirements are also found in selected provisions of NAC 459. The aforementioned statutory and regulatory sections satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Nevada and the EPA, signed by the EPA Region 9 Regional Administrator April 3, 2019, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42 by incorporating by reference the Federal provisions at NAC 459.993 and providing authority to hold hearings as deemed necessary to obtain public testimony at NAC 445.22755.

To qualify for final approval, revisions to a state's program must be "equivalent to,

consistent with, and no less stringent” than the 2015 Federal Revisions. In the 2015 Federal Revisions, the EPA addressed UST systems deferred in the 1988 UST regulations, and added, among other things, new operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. The EPA analyzes revisions to approved state programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The Division has revised its regulations to help ensure that the State’s UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the Division has amended the NAC to incorporate the revised requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions. The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Title 40 CFR 281.39 describes the state operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than Federal requirements. Nevada has incorporated by reference the Federal requirements at NAC 459.993 with certain additional provisions at NAC 459.99395(1) and (2). After a thorough review, the EPA has determined that Nevada’s operator training requirements are equivalent to, consistent with, and no less stringent than Federal requirements.

As part of the State Application, the Senior Deputy Attorney General for the Division certified that the laws of the State provide adequate authority to carry out the “no less stringent” technical requirements submitted by the state in order to meet the criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is considered “broader in scope” and is not part of the federally-approved program and are not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following regulatory requirements are considered broader in scope than the Federal program as these State-only regulations are not required by Federal regulation and are implemented by the State in addition to the federally approved program: NAC 459.99285, which provides the State-only definition of “marina storage tank,” is outside the scope of the Federal program because these types of tanks do not fall under the applicability of the UST program; and NAC 445.2271 and 445A.2273, which deal with specific types of corrective action plans, contain references that are outside the scope of the Federal UST program with respect to contamination by hazardous waste, which is regulated under RCRA Subtitle C. Nevada also has multiple additional state-only provisions at NAC 459.9933 through 459.9938 that only apply to marina storage tanks. Marina storage tanks are defined as a type of aboveground storage tank and these types of tanks are broader in scope than the Federal RCRA Subtitle I program.

The following statutory provisions are considered broader in scope than the Federal program: Nevada Revised Statutes (NRS) Chapter 445C, Environmental Requirements, Cleanup of Discharged Petroleum is broader in scope than the Federal program because this provision concerns the relocation of the State’s Petroleum Fund, a State-only fund; NRS 459.812(2) and 459.820(2) are broader in scope than the Federal underground storage tank program because these particular definitions are exclusive to aboveground storage tanks; and NRS 459.836(3), 459.838, and 459.840 are broader in scope than the Federal program because they are applicable to certain State-only fees and funds, and fees and funds are not included in the Federal program and are broader in scope.

More Stringent Provisions

Where an approved state program includes requirements that are considered more stringent than required by Federal law, the more stringent requirements become part of the federally-approved program (40 CFR 281.12(a)(3)(i)).

The following regulatory requirements are considered more stringent than the Federal program, and on approval, they become part of the federally-approved program and are federally enforceable:

NAC 459.9945 requires secondary containment of tanks beginning with those installed on or after July 1, 2008, which is more stringent than the Federal program that subjected tanks to the secondary containment requirement in 2015;

NAC 459.994 includes an additional provision related to tank tightness testing that is more stringent than the Federal program (for example, NAC 459.994(2) requires the testing to be performed by a contractor certified by the Division and that a certificate issued by the contractor be retained by the owner or operator, and NAC 459.994(3) allows the testing to be waived for “abandoned underground storage tanks” if there is a threat to human health or the environment.);

NAC 445A Water Controls, section 445A.22695(1) requires “immediate action...under certain circumstances; Director may waive certain requirements”, which is more stringent than the Federal program because Nevada requires immediate action in certain circumstances where the Federal program does not; and

NAC 445A.227 and 445A.22725, which include a provision that the Director may consider certain factors when determining whether a corrective action is required, making the State provisions more stringent than the Federal program because Nevada may require owners/operators to take corrective action in circumstances not required by the Federal program.

I. How does this action affect Indian country (18 U.S.C. 1151) in Nevada?

The EPA’s approval of Nevada’s Program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes any land held in trust by the United States for an Indian tribe, and any other areas that are “Indian country” within the meaning of 18 U.S.C.

1151. Any lands removed from an Indian reservation status by Federal court action are not considered reservation lands even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. See 40 CFR 281.12(a)(2).

II. Statutory and Executive Order (EO) Reviews

This action only applies to Nevada's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows.

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011). This action approves State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

C. Executive Order 13132: Federalism

This action will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999), because it merely approves State requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or the distribution of power and responsibilities established by RCRA.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

E. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This authorization is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

F. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), the EPA grants a state’s application for approval as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

G. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this authorization, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

H. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the authorization in accordance with the “Attorney

General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive order.

I. Paperwork Reduction Act

This authorization does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this authorization approves pre-existing State rules which are at least equivalent to, consistent with, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the authorization is not subject to Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5

U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** because it is a direct final authorization.

Authority: This authorization is issued under the authority of sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Parts 281 and 282

Environmental protection, Administrative practice and procedure, Hazardous substances, State program approval, and Underground storage tanks.

Dated: September 19, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region 9.

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